

BEACH GROOMING ISSUE NEED'S TO BE INVESTIGATED

If "wetlands" are considered to be a WATER-DEPENDENT NATURAL RESOURCE of the Great Lakes, it's time riparian owners may want to push too have the beach grooming controversy investigated.

For close to thirty years we have maintained our beach frontage on West G.T. Bay, along with our neighbors, without incident until the fall of year 2000.

Subsequent to that time our state and federal environmental agencies along with their advocates have been trying to convince the public that preventing vegetation from emerging on our beaches is detrimental to the environment.

While no one is disputing the importance of wetlands and there relationship to the environment, there is another aspect to this issue that is not being told by those condemning beach grooming.

According to information acquired through the federal freedom of information act, part of a mandate of a 1999 Senate appropriation bill for the Michigan DEQ, required them to prepare a report on anticipated Great Lakes water diversion in the 21st century and address state and federal policy and legislation needed to prevent or minimize, or both, the adverse impact on "NEW" and "INCREASED" Great Lakes water diversion.

This report stipulated that the International Joint Commission formally released its final report offering a blueprint for protecting the waters of the Great Lakes Basin from potential impacts of water removals and consumption use. One prerequisite for any "NEW" withdrawal required that there must be an improvement to the waters and WATER-DEPENDENT NATURAL RESOURCES of the Great Lakes Basin. This means that the individual, cumulative, immediate and long-term adverse impacts of withdrawal are "outweighed" by the beneficial, restorative impacts and associated enhancement measures. This report, pursuant to the requirements of 1999 Public Act, 125, was submitted September 30, 2000.

If this is a situation wherein there has been consorted effort to turn our beaches into swamps to satisfy this new requirement to justify NEW and INCREASED water diversion, it goes without saying, this matter needs to be investigated.

Richard H. Mayor
3846 Lee Point Rd.
Suttons Bay, MI 49682

FEB 09 2006



JOHN ENGLER, Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

"Better Service for a Better Environment"

HOLLISTER BUILDING, PO BOX 30473, LANSING MI 48909-7973

INTERNET: www.deq.state.mi.us

RUSSELL J. HARDING, Director

September 22, 2000

COPY

The Honorable John Engler
Governor of Michigan
P.O. Box 30013
Lansing, Michigan 48909

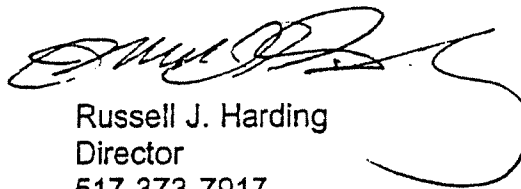
Dear Governor Engler:

Attached please find the report to the Michigan Legislature as required by Section 211(2) of 1999 PA 125, regarding anticipated Great Lakes water diversions in the twenty-first century and recommendations on a research program and other measures needed to evaluate the impact of proposed diversions.

If you have any questions regarding this report, please contact Mr. G. Tracy Mehan, III, Director, Office of the Great Lakes, at 517-335-4056.

Thank you for your consideration.

Sincerely,



Russell J. Harding
Director
517-373-7917

Attachment

cc/att: Senator Loren N. Bennett
Senator Kenneth R. Sikkema
Representative William R. Byl
Representative Larry L. DeVuyst
Ms. Pamela Graham, Senate Fiscal Agency
Dr. Kirk Lindquist, House Fiscal Agency
Mr. Mike Jackson, DMB
Mr. Gary R. Hughes, Deputy Director, DEQ
Mr. G. Tracy Mehan, DEQ
Mr. Dennis Fedewa, DEQ
Mr. Timothy Sowton, Legislative Liaison, DEQ

**Report to the Governor and Legislature
of the
State of Michigan**

by the

**Michigan Department of Environmental Quality
Pursuant to Section 221(2), of 1999 PA 125**

September 2000

Introduction

Section 211 (2), of 1999 PA 125 instructed the Department of Environmental Quality to prepare and submit to the Governor and Legislature a report on anticipated Great Lakes water diversions in the twenty-first century and recommendations on a research program and other measures needed to evaluate the impact of proposed Great Lakes water diversions. It also instructed the department to recommend appropriate state and federal policies and legislation needed to prevent or minimize, or both, the adverse impacts of new and increased Great Lakes water diversions, including proposals to draw water from the Great Lakes for commercial shipment outside the Great Lakes basin.

This report complies with the legislative directive outlined above.

Last year, under cover letter of September 30, 1999, Michigan Department of Environmental Quality Director Russell J. Harding submitted a report pursuant to Section 227, of 1998 PA 292, which focused on similar matters requested in the current legislation. That report is incorporated herein as if fully set out.

The material below is provided by way of supplementation to last year's report.

International Joint Commission (IJC) Issues Final Report on Great Lakes Diversions:

On March 15, 2000, the International Joint Commission (IJC) formally released its final report offering a blueprint for protecting the waters of the Great Lakes Basin from potential impacts of water removals and consumptive uses. The report, *Protection of the Waters of the Great Lakes. Final Report to the Governments of Canada and the United States* (February 22, 2000), is available electronically at www.ijc.org on the World Wide Web.

The IJC recommended that Canadian, U.S., federal, provincial, and state governments should not permit the removal of water from the Great Lakes Basin unless the proponent demonstrates that the removal will not endanger the integrity of the Great Lakes ecosystem.

The IJC report contains numerous findings and recommendations (e.g., improve water use data). In general, it recognizes the states and provinces as the primary steward of the waters of the Great Lakes as long as they exercise their authority "without prejudice to the authority of the federal governments..."

The report responded to the request made by the governments of Canada and the United States in their February 10, 1999, Water Uses Reference for recommendations for the protection of the Great Lakes.

The IJC is a binational Canada-U.S. organization established by the Boundary Waters Treaty of 1909.

A Resource Improvement Standard:

On June 19, 2000, Michigan Governor John Engler announced an "agreement in principle" between the Governors and Premiers of the Great Lakes region on a new standard to be used in determining the merit of any future proposal to withdraw waters from the Great Lakes (see attached press release). A common standard is essential to provide a legal justification for decisions to approve, or disapprove, any water uses or diversions under the United States Constitution and international trade agreements.

The standard will, ultimately, require federal and state laws to implement it. It would apply only to new or increased withdrawals of water.

Any proponent of a new withdrawal must meet all of the following conditions:

- 1) There must be an improvement to the waters and water-dependent natural resources of the Great Lakes Basin. This means that the individual, cumulative, immediate and long-term adverse impacts of the withdrawal are outweighed by the beneficial, restorative impacts and associated enhancement measures;
- 2) The withdrawal, individually or cumulatively, must not cause significant adverse impact to the quantity or quality of the Great Lakes Basin waters and resources dependent upon them;
- 3) The proponent of the project must implement all reasonable and appropriate water conservation measures; and
- 4) The project must comply with all other applicable laws.

The Governors and Premiers plan on incorporating this standard into the Great Lakes Charter as Annex 2000, which will guide their future legislative activities.

Water Resources Management Decision Support System for the Great Lakes:

In August of 2000, the Great Lakes Commission received a grant in the amount of \$745,000 from the regional Great Lakes Protection Fund for the first phase of developing a Water Resources Management Decision Support System for the Great Lakes. See press release and Project Work Plan (August 2000) attached. This grant was made in response to recommendations of the Council of Great Lakes Governors.

The Great Lakes Commission is the region's interstate compact organization. Michigan is an active member and will participate in this new project.

The Michigan Department of Environmental Quality will update this report as policy makers further refine their response to the challenge of managing the waters of the Great Lakes.

Attachments:

1. Press Release, "Project will yield water management decision support system," Great Lakes Commission, August 22, 2000;
2. *A Water Resources Management Decision Support System for the Great Lakes, Project Work Plan*, Great Lakes Commission, August 2000; and
3. Press Release, "Governor Engler Announces New Standard for Protection of Great Lakes," State of Michigan, Office of the Governor, June 19, 2000.



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN ENGLER
GOVERNOR

FOR IMMEDIATE RELEASE:
June 19, 2000

CONTACT: John Truscott
(517) 335-6397

Governor Engler Announces New Standard for Protection of Great Lakes

Governor John Engler announced in Alpena, Michigan, today that the Great Lakes Governors and Premiers have reached an "agreement in principle" on a new standard to be used in determining the merit of any future proposal to withdraw waters from the Great Lakes.

"At a time when concerns over low lake levels are at an all-time high, this agreement reassures our citizens that Great Lakes leaders have lake management and protection at the top of their agenda," Engler said.

Under the agreement, the governors and premiers will jointly agree that no new or increased withdrawals of water will be allowed from the Great Lakes Basin unless the proponent of the withdrawal can meet all of the following conditions:

- 1) There must be an improvement to the waters and water-dependent natural resources of the Great Lakes Basin. This means that the individual, cumulative, immediate and long-term adverse impacts of the withdrawal are outweighed by the beneficial, restorative impacts and associated enhancement measures;
- 2) The withdrawal, individually or cumulatively, must not cause significant adverse impact to the quantity or quality of the Great Lakes Basin waters and resources dependent upon them;

(more)

- 3) The proponent of the project must implement all reasonable and appropriate water conservation measures; and
- 4) The project must comply with all other applicable laws.

The new conservation-based standard is designed to withstand constitutional and trade law challenges if governors and premiers disapprove withdrawals because it is based on a scientific, resource-based rationale. Legal experts have warned that it is illegal to ban, outright, the export of Great Lakes water out of the basin because such a law would violate international trade law, treaties, and the Commerce Clause in the U.S. Constitution.

"I believe this agreement fulfills a goal I set in April 1999 when I wrote my Great Lakes colleagues and the Premiers of Ontario and Quebec about serious threats to our control of the waters of the Great Lakes," Engler said. "The agreement establishes a common standard which will guide our stewardship of these priceless resources in the next millennium, while assuring improvement and continued benefits to the Great Lakes ecosystem."

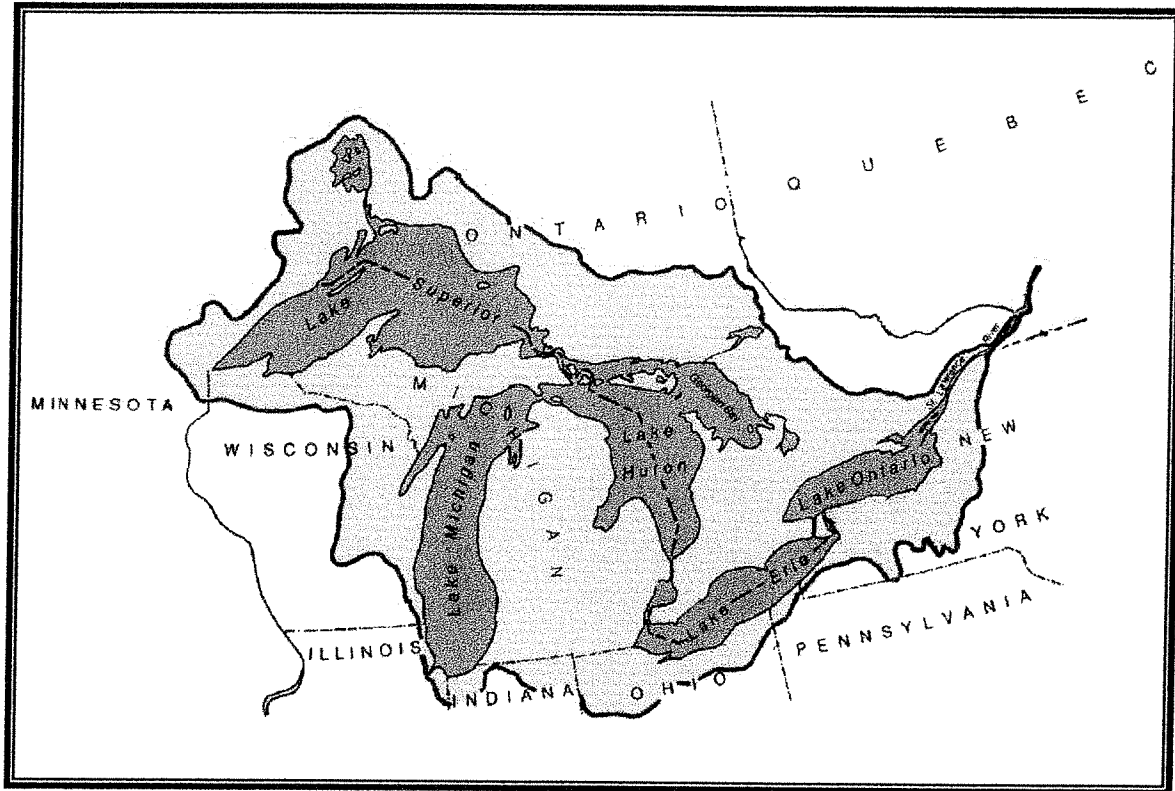
In 1991, Governor Engler became the only Great Lakes governor to veto a diversion of Great Lakes water sought by another state. The resulting agreement, Engler said, will keep decision-making in the basin and prevent federalization of the Great Lakes. The next step will be to incorporate the agreement into the Great Lakes Charter as Annex 2000. The agreement is expected to be signed at the Council of Great Lakes Governors' September meeting.

"Reaching a consensus to manage the waters of the Great Lakes on the basis of actually improving these resources—not presiding over their gradual degradation—meets the challenge of a growing, thriving society seeking to reconcile conservation and economic growth," the Governor said. "In the future, water projects will be approved only if they do more good than harm."

The Great Lakes Charter Annex

A Supplementary Agreement to The Great Lakes Charter

June 18, 2001



Annexe à la Charte des Grands Lacs

Entente additionnelle à la Charte des Grands Lacs

18 juin 2001

THE GREAT LAKES CHARTER ANNEX

A SUPPLEMENTARY AGREEMENT TO THE GREAT LAKES CHARTER

June 18, 2001

FINDINGS

The Great Lakes are a bi-national public treasure and are held in trust by the Great Lakes States and Provinces. For the last sixteen years, the Great Lakes Governors and Premiers have followed a set of principles to guide them in developing, maintaining, and strengthening the regional management regime for the Great Lakes ecosystem. Protecting, conserving, restoring, and improving the Great Lakes is the foundation for the legal standard upon which decisions concerning water resource management should be based.

There has been significant progress in restoring and improving the health of the ecosystem of the Great Lakes Basin. However, the Waters and Water-Dependent Natural Resources of the Basin remain at risk of damage from pollution, environmental disruptions, and unsustainable water resource management practices which may individually and cumulatively alter the hydrology of the Great Lakes ecosystem.

PURPOSE

In agreeing to this Annex, the Great Lakes Governors and Premiers reaffirm their commitment to the five broad principles set forth in the Great Lakes Charter, and further reaffirm that the provisions of the Charter will continue in full force and effect. The Governors and Premiers commit to further implementing the principles of the Charter by developing an enhanced water management system that is simple, durable, efficient, retains and respects authority within the Basin, and, most importantly, protects, conserves, restores, and improves the Waters and Water-Dependent Natural Resources of the Great Lakes Basin.

State and Provincial authorities should be permanent, enforceable, and consistent with their respective applicable state, provincial, federal, and international laws and treaties. To that end, and in order to adequately protect the water resources of the Great Lakes and the Great Lakes ecosystem, the Governors and Premiers commit to develop and implement a new common, resource-based conservation standard and apply it to new water withdrawal proposals from the Waters of the Great Lakes Basin. The standard will also address proposed increases to existing water withdrawals and existing water withdrawal capacity from the Waters of the Great Lakes Basin.

DIRECTIVES

The Governors and Premiers put forward the following DIRECTIVES to further the principles of the Charter.

DIRECTIVE #1

Develop a new set of binding agreement(s).

The Governors and Premiers agree to immediately prepare a Basin-wide binding agreement(s), such as an interstate compact and such other agreements, protocols or other arrangements between the States and Provinces as may be necessary to create the binding agreement(s) within three years of the effective date of the Annex. The purpose of the agreement(s) will be to further the Governors' and Premiers' objective to protect, conserve, restore, improve, and manage use of the Waters and Water-Dependent Natural Resources of the Great Lakes Basin. The agreement(s) will retain authority over the management of the Waters of the Great Lakes Basin and enhance and build upon the existing structure and collective management efforts of the various governmental organizations within the Great Lakes Basin.

DIRECTIVE #2

Develop a broad-based public participation program.

The Governors and Premiers commit to continue a process that ensures ongoing public input in the preparation and implementation of the binding agreement(s) called for in this Annex. Included in this process will be periodic progress reports to the public.

DIRECTIVE #3

Establish a new decision making standard.

The new set of binding agreement(s) will establish a decision making standard that the States and Provinces will utilize to review new proposals to withdraw water from the Great Lakes Basin as well as proposals to increase existing water withdrawals or existing water withdrawal capacity.

The new standard shall be based upon the following principles:

- Preventing or minimizing Basin water loss through return flow and implementation of environmentally sound and economically feasible water conservation measures; and
- No significant adverse individual or cumulative impacts to the quantity or quality of the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and
- An Improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and
- Compliance with the applicable state, provincial, federal, and international laws and treaties.

DIRECTIVE #4

Project review under the Water Resources Development Act of 1986, §1109, 42 U.S.C. §1962d-20 (1986) (amended 2000).

Pending finalization of the agreement(s) as outlined in Directive #1, the Governors of the Great Lakes States will notify and consult with the Premiers of Ontario and Quebec on all proposals subject to the U.S. Water Resources Development Act of 1986, §1109, 42 U.S.C. §1962d-20 (1986) (amended 2000) (WRDA), utilizing the prior notice and consultation process established in the Charter. In doing so, the Governors and

Premiers recognize that the Canadian Provinces are not subject to, or bound by, the WRDA, nor are the Governors statutorily bound by comments from the Premiers on projects subject to the WRDA.

DIRECTIVE #5

Develop a decision support system that ensures the best available information.

The Governors and Premiers call for the design of an information gathering system to be developed by the States and Provinces, with support from appropriate federal government agencies, to implement the Charter, this Annex, and any new agreement(s). This design will include an assessment of available information and existing systems, a complete update of data on existing water uses, an identification of needs, provisions for a better understanding of the role of groundwater, and a plan to implement the ongoing support system.

DIRECTIVE #6

Further commitments.

The Governors and Premiers of the Great Lakes States and Provinces further commit to coordinate the implementation and monitoring of the Charter and this Annex; seek and implement, where necessary, legislation establishing programs to manage and regulate new or increased withdrawals of Waters of the Great Lakes Basin; conduct a planning process for protecting, conserving, restoring, and improving the Waters and Water-Dependent Natural Resources of the Great Lakes Basin; and identify and implement effective mechanisms for decision making and dispute resolution. The Governors and Premiers also commit to develop guidelines regarding the implementation of mutually agreed upon measures to promote the efficient use and conservation of the Waters of the Great Lakes Basin within their jurisdictions and develop a mechanism by which individual and cumulative impacts of water withdrawals will be assessed. Further, the Governors and Premiers commit to improve the sources and applications of scientific information regarding the Waters of the Great Lakes Basin and the impacts of the withdrawals from various locations and water sources on the ecosystem, and better understand the role of groundwater in the Great Lakes Basin by coordinating their data gathering and analysis efforts. Finally, the Governors and Premiers commit to develop in the new binding agreement(s) the water withdrawal rates at which regional evaluations are conducted and criteria to assist in further defining acceptable measures of Improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin.

FINAL PROVISIONS

This Annex shall come into force on the day that all signatures are executed. The Parties have signed the present agreement in duplicate, in English and French, both texts being equally authentic.

DEFINITIONS

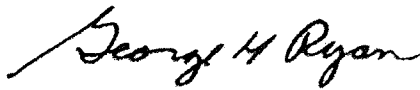
Waters of the Great Lakes Basin (also termed in the Great Lakes Charter as "Water Resources of the Great Lakes Basin") means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes Basin.

Water-Dependent Natural Resources means the interacting components of land, water, and living organisms affected by the Waters of the Great Lakes Basin.

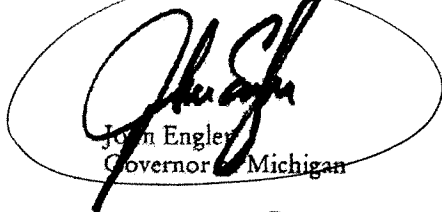
Improvement to the Waters and Water-Dependent Natural Resources of the Great Lakes Basin means additional beneficial, restorative effects to the physical, chemical, and biological integrity of the Waters

and Water-Dependent Natural Resources of the Basin, resulting from associated conservation measures, enhancement or restoration measures which include, but are not limited to, such practices as mitigating adverse effects of existing water withdrawals, restoring environmentally sensitive areas or implementing conservation measures in areas or facilities that are not part of the specific proposal undertaken by or on behalf of the withdrawer.

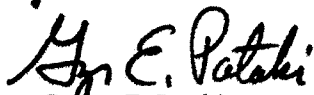
Signed and entered into the 18th day of June 2001.



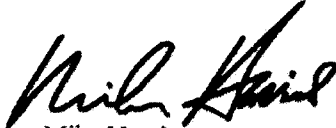
George H. Ryan
Governor of Illinois



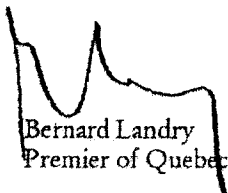
John Engler
Governor of Michigan



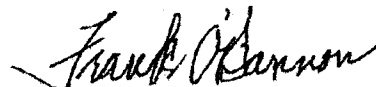
George E. Pataki
Governor of New York



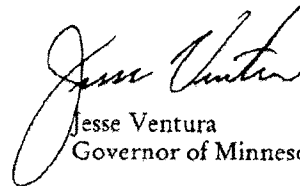
Mike Harris
Premier of Ontario



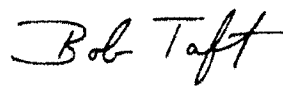
Bernard Landry
Premier of Quebec



Frank O'Bannon
Governor of Indiana



Jesse Ventura
Governor of Minnesota



Bob Taft
Governor of Ohio



Tom Ridge
Governor of Pennsylvania



Scott McCallum
Governor of Wisconsin

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



WILLIAM J. RICHARDS
Deputy Attorney General

P.O. Box 30212
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JENNIFER MULHERN GRANHOLM
ATTORNEY GENERAL

March 14, 2001

Honorable Ken Sikkema
State Senator
The Capitol
Lansing, MI

Dear Senator Sikkema:

The Attorney General has asked me to respond to your recent letter raising questions concerning a riparian owner's¹ interest in lands exposed by receding Great Lakes waters. Information supplied by your staff indicates that receding Great Lakes waters sometimes expose seaweed or other vegetation. The vegetation subsequently dies, emits noxious odors, or impedes a riparian owner's ability to launch recreational watercraft and to install or remove docks. To remedy the situation, the riparian owner desires to cut and remove the vegetation, and to rototill the land.

You first ask whether a Great Lakes riparian owner holds a fee title interest or merely an easement in lands exposed by receding Great Lakes waters. Persons owning Michigan lands that abut the Great Lakes possess certain riparian property rights to use the waters for general purposes such as bathing or domestic use, to have access to navigable waters, to wharf out to navigable waters, and to accretions (the addition of soil to land by gradual, natural deposits). *Hilt v Weber*, 252 Mich 198, 225; 233 NW 159 (1930). Riparian owners own to the waters edge *at whatever stage*. (Emphasis added.) OAG, 1933-1934, pp 286-287 (July 13, 1933). *Hilt*, the leading case on the question, concludes that a Great Lakes riparian owner's fee title interest in the land follows the shoreline under what has been called "a movable freehold." *Hilt*, 252 Mich at

¹ A riparian owner is an owner of land along or bordering on a river. A more technical term, littoral, is often used to designate that which borders on the sea or other tidal water. We use the term "riparian" in its broadest sense to refer either to the bank of a river or the shore of a lake such as the Great Lakes.

Honorable Ken Sikkema

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219, citing 28 Hallsbury, Laws of England, 361. Because the shoreline on the water's edge may be altered by increases or decreases in the water level, or other movement of the water, the riparian owner's right of access to

the water must be preserved. In the process, the riparian owner may gain or lose soil by virtue of the water's action. *Hilt*, 252 Mich at 219-220.

In Michigan, where property abuts a Great Lakes shoreline, the shoreline is the boundary of the property regardless of the subsequent advancement or recession of the water edge. *Hilt*, *supra*; *Cutliff v Densmore*, 354 Mich 586, 590; 93 NW 2d 307 (1958); *Weimer v Gilbert*, 7 Mich App 207, 216; 151 NW2d 348 (1967). The riparian owner's right of access to Great Lakes waters attaches to the entire shoreline; the riparian owner cannot be compelled to reach the water only from certain portions of the shoreline. *Hilt*, 252 Mich at 226.

Since the title to the bed of the Great Lakes is vested in the state as trustee for the people of the state, a riparian owner's right to use the lake bed (i.e., to build a wharf into abutting waters) is subject to the state's reasonable regulatory control. *Obrecht v Nat'l Gypsum Co*, 361 Mich 399, 413-416; 105 NW2d 143 (1960). Owners of lands abutting the Great Lakes are subject to the reasonable exercise of the police power by state or local governmental units, as provided by law. *Obrecht*, 361 Mich at 416.

You also ask what regulatory programs and agencies govern a Great Lakes riparian owner's use of lands exposed by receding Great Lakes lake waters, and whether a riparian owner may, without a state or local permit, cut and remove vegetation or rototill on such lands.

The Wetland Protection Act, as added by 1995 PA 59, as Part 303 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, MCL 324.30301 *et seq*; MSA 13A.30301 *et seq*, regulates shorelands that take on the character and identity of wetlands. Section 30304 of the NREPA provides that a person, without a permit from the state, "shall not do any of the following:"

- (a) Deposit or permit the placing of fill material in a wetland.
- (b) Dredge, remove, or permit the removal of soil or minerals from a wetland.

- (c) Construct, operate, or maintain any use or development in a wetland.
- (d) Drain surface water from a wetland.

The term "wetland" is defined by section 30301(d) as follows:

"Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh and which is any of the following:

- (i) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

The NREPA also authorizes local units of government to regulate wetlands, subject to specific limitations. Sections 30307(4)-(6) and 30308. Local regulation, however, may not conflict with state regulation of wetlands. OAG, 1995-1996, No 6892, pp 138, 141 (March 5, 1996).

The Shorelands Protection and Management Act, as added by 1995 PA 59, as Part 323 of the NREPA, MCL 324.32301 *et seq*; MSA 13A.32301 *et seq*, regulates those Great Lakes shorelands determined by the state to be an "environmental area," "high risk area," or "flood risk area." Section 32301 of the NREPA defines these designation terms as follows:

(b) "Environmental area" means any area of the shoreland determined by the [state] on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.

(c) "High risk area" means an area of the shoreland that is determined by the [state] on the basis of studies and surveys to be subject to erosion.

* * *

(g) "Flood risk area" means the area of the shoreland that is determined by

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the [state] on the basis of studies and surveys to be subject to flooding from effects of levels of the Great Lakes and is not limited to 1,000 feet.

If the state determines a specific Great Lakes shoreland to be a high risk area, flood risk area, or environmental area, it must notify certain entities, including local units of government. Sections 32305, 32306, and 32307 of the NREPA. Moreover, when the state determines land to be a high risk area or environmental area, it must give notice to the affected landowner. State determinations of flood risk areas must include notice directly to the affected landowner, unless the state utilizes a general public notice and comment publication process. 1992 AACCS, R 281.22, 1998 MR 8, R 281.23, and 1992 AACCS, R 281.24.

The Great Lakes Submerged Lands Act, as added by 1995 PA 59, as Part 325 of the NREPA, MCL 324.32501 *et seq*, MSA 13A.32501 *et seq*, regulates the use of Great Lakes bottomlands. Section 32502, which defines the boundaries of the public's interests in these bottomlands and regulates their use below a specified ordinary high-water mark, provides that:

This part shall be construed so as to preserve and protect the interests of the general public in the lands and waters described in this section, . . . For purposes of this part, the ordinary high-water mark shall be at the following elevations above sea level, international Great Lakes datum of 1955: Lake Superior, 601.5 feet; Lakes Michigan and Huron, 579.8 feet; Lake St. Clair, 574.7 feet; and Lake Erie, 571.6 feet.

In OAG, 1977-1978, No 5327, p 518 (July 6, 1978), the Attorney General analyzed the concept of ordinary high-water mark and concluded that:

(2) The ordinary high water mark is set for all the Great Lakes by 1955 PA 247, *supra*, and when the water recedes below the ordinary high water mark, the riparian owner has control over the exposed area, but may not place any permanent structures, or do any dredging or filling on this land without a permit from the Department of Natural Resources.

The Great Lakes Submerged Lands Act further provides that "a person who excavates or fills or in any manner alters or modifies any of the land or waters subject to this part without the approval of the department is guilty of a misdemeanor." Section 32510(1).

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Therefore, in answer to your second question, a Great Lakes riparian owner's use of lands exposed by receding Great Lakes lake waters, depending upon the physical characteristics of the exposed lands, may be subject to the Wetland Protection Act, the Shorelands Protection and Management Act, and the Great Lakes Submerged Lands Act, all of which are administered by the Michigan Department of Environmental Quality. The determination whether a riparian owner needs a permit before cutting and removing vegetation on such land or rototilling such land requires an examination of the specific land in question and necessitates a factual determination whether the land (i) is located below the statutory high-water mark, (ii) has taken on the character and identity of a wetland, or (iii) has been designated by the state to be an "environmental area," "high risk area," or "flood risk area." The question you pose is a mixed question of law and fact. The role of the Attorney General is to issue opinions solely on questions of law, not fact. MCL 14.32; MSA 3.185; *Michigan Beer & Wine Wholesalers Ass'n v Attorney General*, 142 Mich App 294, 300-301; 370 NW2d 328 (1985).

Under the federal Clean Water Act,² 33 USC 1251 *et seq*, the United States Army Corps of Engineers and the United States Environmental Protection Agency may exercise federal jurisdiction over activities affecting the waters of the United States, including adjacent wetlands. 33 CFR 328, *Solid Waste Agency of Northern Cook County v United States Army Corps of Engineers*, US ; 121 S Ct 675; L Ed 2d (January 9, 2001) (citing *United States v Riverside Bayview Homes, Inc*, 474 U.S. 121, 106 S Ct 455; 88 L Ed 2d 419 (1985)). Generally, the United States Army Corps of Engineers and the United States Environmental Protection Agency have delegated or deferred enforcement of federal environmental laws to the State of Michigan.

Sincerely,

William J. Richards
Deputy Attorney General

² As amended by PL 106-284, 114 Stat 870 (October 10, 2000), the Clean Water Act is now referred to as the Beaches Environmental Assessment and Coastal Health Act of 2000.

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What's draining two Great Lakes?

Sinking levels of Huron and Michigan, rising Erie concern U.S. Army Corps, environmentalists.

Gary Heinlein / Detroit News Lansing Bureau

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The U.S. Army Corps of Engineers is disputing some key findings of a controversial report that claims the levels of lakes Michigan and Huron have been on a permanent decline for at least 44 years.

But the Corps is also calling for a detailed study of the apparent drop in those two lakes -- which scientists consider one lake system -- and a corresponding rise in Lake Erie over time.

Environmentalists are sounding alarms, and the International Joint Commission, a U.S.-Canadian governmental group charged with stewardship of the Great Lakes, also is pledging a thorough review.

Michigan and Huron have been steadily draining since a Corps of Engineers dredging project deepened the St. Clair River in 1962 -- and perhaps over a much longer period. So claimed the authors of the 2005 report.

Compiled for a Canadian homeowners association, it said man-made alterations may have set off unending riverbed erosion that lets water from the two lakes spill into Erie, the St. Lawrence Seaway and the Atlantic Ocean faster than it's replenished.

An irreversible drop -- nearly 3 feet in a century and more than expected since the last dredging -- has been costly for wildlife, commercial shipping, recreation and tourism, according to the authors.

Tim Eder, water resources director for the National Wildlife Federation, said officials should fast-track a government-sponsored inquiry.

"The amount being lost through the St. Clair River is far in excess of the Chicago Diversion or any other diversion that could be contemplated," Eder said. "We're making the drain bigger, water is going out faster to the ocean, and it's never coming back."

The Chicago Diversion is a connection built in 1890 from Lake Michigan through the Chicago and Illinois rivers for drinking water and navigation. It sucks more than 200 million gallons of water per day from the base of Lake Michigan and ultimately drains it into the Mississippi.

A key finding of the report is that lakes Michigan and Huron are continuing to go down while Lake Erie is rising. That's based on data tracking the three lakes' comparative levels since 1860.

Lakes Huron and Michigan were supposed to stabilize at lower levels following the 1962 dredging -- not continue shrinking.

The Corps said dredging probably created just part of the problem. The report's authors gave too little consideration to such other factors as rainfall and "crustal rebound" of the earth that has gone on since the region was freed from the weight of the ice-age glaciers that formed the lakes, the Corps said in a formal response.

"There could be a number of reasons why Lake Erie could be rising relative to Michigan and Huron," added Scott Thieme, chief of the Great Lakes Hydraulics and Hydrology Office in Detroit. "Everybody would like to get to the bottom of it and figure out what's going on with Lake Huron and what needs to be done."

The lake level reduction since the mid-1800s has been 32 inches, an amount 28 times the volume of Lake St. Clair, said report writer Rob Nairn. An "ongoing significant drop" since the 1962 dredging was masked by wet weather that caused high lake levels from 1970-98, he added.

His report only heightened concern for members of the sponsoring Georgian Bay Association, who had raised \$200,000 to find out why the water has been lower for seven straight years along their far northern stretch of Lake

Huron shore. They've watched wetlands disappear and, with them, fish and herons and other wildlife that used to be abundant.

"We think there's some urgency here," said Mary Muter, bay keeper for the association.

The chief evidence of erosion is a 60-foot-deep hole in the St. Clair River bottom near the Blue Water Bridge at Port Huron. The Corps of Engineers said the depression has shown up in data from earlier in the 20th century, but the study's researchers said it has grown longer and wider.

The hole is in an area where the Corps dredged out two feet of bottomlands to deepen the shipping channel down the middle of the upper half of the river from 25 feet to 27 feet. Part of a more extensive revamping of the Great Lakes system to accommodate oceangoing vessels from the St. Lawrence Seaway, the swath is 600-800 feet wide.

Thieme said that was but one of several alterations affecting water levels from the 1860s through the 1960s. There also was dredging to accommodate shipping in the 1930s and extensive sand and gravel excavating between 1915 and 1925.

Authors of the report, W.F. Baird and Associates Coastal Engineers, didn't blame the erosion on the Corps of Engineers because they aren't sure of all the causes. They said other factors could be sea walls built by property owners, shore erosion, wetlands filling and sand mining.

"We really haven't determined -- and I'm not sure if we ever will -- who's at fault," Nairn said.

While key findings are in dispute, they're of sufficient gravity to have gained the attention of the International Joint Commission.

Commission officials said they plan to investigate the Huron-Michigan water losses in the early years of a five-year look at policies governing lake levels. The \$14.6 million study will start this spring if the U.S. and Canadian governments come up with the money.

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